

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

June 28, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: October 25, 2004
Case Number: TSO-0152

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") for access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." ¹

I. Background

The individual is employed with a Department of Energy (DOE) contractor. In connection with his employment, the contractor applied to DOE security on the individual's behalf for access authorization. As part of the ensuing investigation, the individual was called in for a Personnel Security Interview (PSI) in July 2003. During the PSI, the individual provided information to the local security office about his alcohol consumption, his personal finances, and an assault against his first wife. After the PSI, the individual was referred to a psychiatrist (hereinafter referred to as "the DOE psychiatrist") for an agency-sponsored evaluation. As part of this evaluation, the DOE psychiatrist reviewed the individual's security file and interviewed him. He then produced a written evaluation of the individual, and sent that report to the local security office.

After reviewing the results of this investigation, the local security office determined that derogatory information existed that cast into doubt the individual's eligibility for a security clearance. The Manager of the local DOE operations office informed the individual of this determination in a letter, dated July 14, 2004, that set forth in detail the DOE's security concerns and the reasons for those concerns. I will hereinafter refer to this letter as the Notification Letter.

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as access authorization or a security clearance.

II. Statement of Derogatory Information

As previously stated, the Notification Letter included a statement of derogatory information that created a substantial doubt as to the individual's eligibility to hold a clearance. This information pertains to paragraphs (j) and (l) of the criteria for eligibility for access to classified matter or special nuclear material set forth at 10 C.F.R. § 710.8. Paragraph (j) defines as derogatory information indicating that the individual "has been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." Under this paragraph, the Letter cites statements made by the individual during the PSI indicating that:

1. He began drinking at 19, and over the years his consumption gradually increased to the point where, one year prior to the date of the PSI, he was consuming an average of two cases of beer a week, "if not a little bit more." PSI at 26.
2. During this time, while he did not drink while at work, he would "slip out and get me a beer at lunch." *Id.*
3. He currently consumes one to two beers per weekday and at least six beers per day on weekends.
4. His then-girlfriend (and now wife) gave him a limit of six to twelve beers per day on weekends "depending on what we're doing" after he explained to her that he "used to have a drinking problem." *Id.*
5. It takes six beers for him to reach intoxication, and he was last intoxicated the Friday preceding the PSI.
6. Before he cut back on his drinking at the behest of his girlfriend, he had been told by his ex-wife and his daughters that he had a drinking problem.
7. He has "probably" passed out and had blackouts due to his drinking. PSI at 29.
8. He has never received any alcohol treatment or counseling.

The Letter also cites the DOE psychiatrist's evaluation that the individual suffers from alcohol abuse with no evidence of reformation or rehabilitation.

Paragraph (l) pertains to information indicating that the individual "has engaged in any unusual conduct or is subject to any circumstances which tend to show that [he] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation or duress which may cause [him] to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l). As a basis for this paragraph, the Letter cites the individual's statements during the PSI about his financial and legal difficulties.

Concerning his personal finances, the individual indicated that:

1. His wages had been garnished by the IRS to satisfy a tax debt of approximately \$80,000.
2. He and his ex-wife “missed a year here and there” of filing tax returns. PSI at 5.
3. He has overdue accounts with three creditors totaling approximately \$4,000 and he has not made arrangements with these creditors to satisfy these debts.
4. When asked why he had not paid anything on these accounts, he responded that “I really just don’t have an answer to that. . . . its just not being good with money I guess or not having enough responsibility.” PSI at 12.

Concerning his legal difficulties, the individual said that:

1. There are two outstanding arrest warrants for him.
2. These warrants stem from a 2002 incident during which he slapped his ex-wife’s legs while she was lying on their bed.
3. After this incident, she spent the night in a nearby shelter for abused spouses.

The Letter also informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt concerning his eligibility for access authorization. The individual requested a hearing on this matter. The Manager forwarded this request to the Office of Hearings and Appeals and I was appointed the Hearing Officer.

III. REGULATORY STANDARDS

The criteria for determining eligibility for security clearances set forth at 10 C.F.R. Part 710 dictate that in these proceedings, a Hearing Officer must undertake a careful review of all of the relevant facts and circumstances, and make a “common-sense judgment . . . after consideration of all relevant information.” 10 C.F.R. § 710.7(a). I must therefore consider all information, favorable or unfavorable, that has a bearing on the question of whether granting the individual a security clearance would compromise national security concerns. Specifically, the regulations compel me to consider the nature, extent, and seriousness of the individual’s conduct; the circumstances surrounding the conduct; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the absence or presence of rehabilitation or

reformation and other pertinent behavioral changes; the likelihood of continuation or recurrence of the conduct; and any other relevant and material factors. 10 C.F.R. § 710.7(c).

A DOE administrative proceeding under 10 C.F.R. Part 710 is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b)(6). Once the DOE has made a showing of derogatory information raising security concerns, the burden is on the individual to produce evidence sufficient to convince the DOE that restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). *See Personnel Security Hearing*, Case No. VSO-0013, 24 DOE ¶ 82,752 at 85,511 (1995) (*affirmed* by OSA, 1996), and cases cited therein. For the reasons that follow, I conclude that the individual has not made this showing, and that he should therefore not be granted a clearance at this time.

IV. THE HEARING

At the hearing, the individual presented the testimony of his current wife, four co-workers or former co-workers and himself in an attempt to address the security concerns set forth in the Notification Letter. The DOE psychiatrist testified for the DOE.

The DOE psychiatrist testified that his evaluation of the individual included a review of the transcript of the PSI, a clinical interview, and the administration of several psychological tests. Hearing Transcript (Tr.) at 9-10. He said that his diagnosis of Alcohol Abuse was based on the individual’s statements during the PSI and the clinical interview, as well as on the test results. Tr. at 10-11. The DOE psychiatrist specifically referred to the individual’s statements during the clinical interview about his current alcohol use, which includes “drinking up to eight beers during the weekend,” and about his girlfriend, “who was, in [the individual’s] words, cleaning him up or allowing him the opportunity to decrease his alcohol use.” Tr. at 11. The DOE psychiatrist also cited the domestic violence charges filed against the individual. He concluded that in order to demonstrate sufficient evidence of reformation or rehabilitation, the individual would have to completely abstain from alcohol use for a period of 12 months. Tr. at 27-28. In his written evaluation, the DOE psychiatrist added that “specific treatment directed toward alcohol use would be necessary in order to affect [sic] appropriate rehabilitation and reformation.” Evaluation at 1-2.

The individual then testified. He maintained, in general, that while he could understand how the DOE psychiatrist could conclude that he suffered from alcohol abuse based on his level of alcohol consumption in 2002, he has significantly decreased his usage in the past two and one half years and no longer merits such a diagnosis. Tr. at 37, 39-40. Specifically, he stated that his alcohol consumption peaked during the stressful period leading up to his divorce from his first

wife, Tr. at 37, and that he currently drinks “no more than two” beers on an “average” weekday and “no more than five to six” beers per day on weekends. Tr. at 39. He added that he has never consumed alcohol while on the job, has never reported to work in an intoxicated condition, and is committed to remaining sober while working at his current jobsite. Tr. at 40.

Concerning his financial problems, the individual testified that he is now up to date in terms of filing federal tax returns, that he has fully satisfied his debts to the IRS and two of the three creditors mentioned in the Notification Letter, and that he intends to settle his account with the third creditor, as well. Tr. at 46-47. He added that he has no other delinquent accounts and that he is now paying all of his bills on time. Tr. at 47.

Regarding the warrants issued against him, the individual said that the complaining witness was his ex-wife and that the warrants relate to the period of time in 2002 leading up to his divorce. The warrants were served by mail, he was never arrested, and the individual added that he is unaware of any further legal actions taken against him in this matter. Tr. at 49.

The individual’s current wife then testified. She said that when she met the individual, he was in the process of getting a divorce from his first wife and was not handling the situation well. Tr. at 60. Specifically, he was drinking heavily, his relationship with his first wife was, understandably, contentious, and he was experiencing financial difficulties due to back taxes owed and credit card debt. Tr. at 60-61. Since then, however, the individual’s behavior has changed markedly, she testified. He has curtailed his drinking significantly, to the point where his parents and children have noticed and commented that the individual is now “back to more like what he used to be” before he began drinking to excess. Tr. at 63. He now goes to church, she added, has brought all of his accounts current except for one, and exercises financial responsibility. Tr. at 64-65. Finally, she said that she has never witnessed any violent behavior on the part of the individual. Tr. at 65.

The individual’s four co-workers or former co-workers each indicated that the individual is a good worker and that they have never seen him intoxicated while on the job or seen evidence of impaired judgement on the part of the individual. Tr. at 68-91.

V. ANALYSIS

After reviewing the testimony presented and all of the exhibits submitted by the parties, I find that the individual has adequately addressed the DOE’s security concerns under paragraph (l). Specifically, as demonstrated by the testimony at the hearing and by the exhibits submitted by the individual, he has paid his debts to the IRS and two of his other three creditors, and is now behaving in a financially responsible manner. Although I note that one creditor remains unpaid,

based on the testimony and on the individual's actions with regard to his other creditors, I believe that this last account will promptly be brought current, as well. Furthermore, the individual's wife's testimony about the individual's non-violent nature leads me to believe that the slapping of his ex-wife was an isolated incident brought on by the stress of a dissolving marital relationship.

However, I reach a different conclusion regarding the DOE's security concerns under paragraph (j) about the individual's alcohol use. The DOE psychiatrist, the only expert witness whose testimony was heard in this matter, diagnosed the individual as suffering from alcohol abuse, and indicated in his evaluation and during the hearing that in order to demonstrate sufficient evidence of reformation or rehabilitation, the individual would have to undergo alcohol therapy or counseling and would have to completely abstain from alcohol use for 12 months. I find these recommendations to be reasonable and adequately supported by the record in this matter.

The individual continues to drink beer in significant quantities, has not undergone any type of therapy or counseling, and apparently does not believe that he currently has a drinking problem. I therefore agree with the DOE psychiatrist that the individual has not adequately demonstrated reformation or rehabilitation from alcohol abuse, and I conclude that the DOE's security concerns under paragraph (j) remain unresolved. This conclusion is consistent with decisions made by other Hearing Officers in cases where prospective clearance holders have not satisfied the criteria for rehabilitation or reformation from alcohol abuse recommended by expert witnesses. *See, e.g., Personnel Security Hearing, Case No. VSO-0522 (June 27, 2002); Personnel Security Hearing, 25 DOE ¶ 82,758 (1995).*

Consequently, the individual has not demonstrated that granting him a clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the individual should not be granted access authorization at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Robert B. Palmer
Hearing Officer
Office of Hearings and Appeals

Date: June 28, 2005